



## MEETING MINUTES

### MILPITAS PLANNING COMMISSION

May 22, 2019 7:00 PM

#### CITY HALL COUNCIL CHAMBERS

455 E. CALAVERAS BLVD., MILPITAS, CA 95035

**I. CALL MEETING TO ORDER**

**Chair Mandal** called the meeting to order at 7:02 P.M.

**II. ROLL CALL**

**Present:** Chair Mandal, Vice Chair Ciardella, Commissioner Morris, Alcorn, Chuan, Chua, Tao

**Absent:** --

**Staff:** Ned Thomas, Jessica Garner, Heather Lee, Rozalynne Thompson, Elizabeth Medina

**III. PLEDGE OF ALLEGIANCE**

**Commissioner Tao** led the Pledge of Allegiance.

**IV. CONFLICT OF INTEREST DECLARATION**

**City Attorney Heather Lee** asked if any member of the Commission had any personal or financial conflict of interest related to any of the items on the agenda.

**V. APPROVAL OF AGENDA**

**Chair Mandal** asked if staff or Commissioners had changes to the agenda with two changes requested by staff.

- Item IX-1 - *The public hearing notice for this item included consideration of new regulations related to massage establishments. These regulations have been separated from this item and will be re-noticed for consideration at a future Planning Commission meeting.*
- Item IX-2 – *To be continued to a date certain, being 6/26/19.*

**Motion** to approve the May 22, 2019 agenda as amended.

Motion/Second: Commissioner Morris/Commissioner Chua

AYES: 7

NOES: 0

ABSTAIN: 0

## VI. ANNOUNCEMENTS

**Planning Director Ned Thomas** provided departmental updates to the commission regarding:

- General Plan Update discussed at CC meeting on 5/21.
- New Planning Commissioner, Ricky Ablaza was appointed at 5/21 CC meeting; recognized Vice-Chair's long standing service on the Planning Commission
- Congratulated Planning Manager, Jessica Garner for passing AICP exam.

Vice Chair Ciardella noted he was told that the Mayor is to make the final decision on who is appointed on the Planning Commission. City Attorney did not have any comment in regards to his inquiry and noted that City Attorney's office could get back to him.

Chair Mandal asked Mr. Thomas if there could be a program/gathering for departing commissioners appreciating them for their service. Mr. Thomas noted that it would be a great idea now that expired seats have now been filled and arrangements will be made soon. Vice Chair Ciardella noted that he noticed that former commissioners were not at the annual Commissioner's Luncheon this year and recommended that they be called before the gathering.

Commissioner Chua thanked Vice Chair Ciardella's services and applauded what he has done for the City.

## VII. PUBLIC FORUM

**Chair Mandal** invited members of the audience to address the commission.

Frank DeSmidt shared that there will be a Memorial Day ceremony hosted by City of Milpitas on Monday, 5/27 at 9am.

## VIII. APPROVAL OF MEETING MINUTES

**No meeting minutes to approve.**

## IX. PUBLIC HEARING

**IX-1 ZONING TEXT AMENDMENT – ADMINISTRATIVE HEARING PROCESS – P-ZA19-0003\*** – City-initiated Zoning Ordinance Text Amendment to establish an Administrative Hearing process, discontinue the Planning Commission Subcommittee, and amend regulations related to massage establishments. The project is categorically exempt from California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) (Common Sense Exemption) of the CEQA Guidelines. Project Planner: Rozalynne Thompson, (408) 586-3278, [rthompson@ci.milpitas.ca.gov](mailto:rthompson@ci.milpitas.ca.gov)

Project Planner Rozalynne Thompson showed a presentation and discussed the project.

Commissioner Tao asked about the envisioned frequency of reviews; once a week, twice a month. Ms. Thompson stated it would be as much as needed, weekly. Mr. Tao inquired about a formal appeals process to the Planning Commission. Ms. Thompson noted that just as the Planning Subcommittee would appeal to Planning Commission; the same appellant process would stand for the Zoning

Administrator. Mr. Tao asked if the reduce distance for noticing from 1000 ft to 300 ft was cleared by legal staff and if it is practiced in other jurisdictions. Ms. Thompson referred this inquiry to the City Attorney. Ms. Lee stated that 300 ft is consistent with state law. Mr. Tao asked if there were any court cases that challenged noticing of lesser distance. Ms. Lee noted that the options of greater distance of noticing is made by local jurisdictions. To make certain there is consistency, Ms. Tao asked if there is there a “fail safe” process should the Zoning Administrator role be held/taken over by another staff member. Mr. Thomas shared that he would fulfill the Zoning Administrator role in the beginning, there after it would be the Planning Director or designee (Planning Manager) and as time passed would like to come up with Standard Operating Procedures for the ZA meetings. Mr. Thomas also noted that we have a Consultant to help/train for Zoning Administrator procedures. Mr. Tao noted that he feels that ZA process (with consistency in place and not having to worry about the character of the ZA that is assigned) would be a relief, less troublesome and user friendly for the Applicant and is a wonderful proposal before us. Mr. Tao asked, if passed, what would be the implementation timeline. Ms. Thompson noted it would be 30 days after the 2<sup>nd</sup> reading – first reading June – second reading in August. Mr. Thomas informed all that the first Council meeting in August will be canceled due to Neighborhood Night Out with the Police Department; second reading would most likely occur end of August.

Commissioner Chua asked Thompson to explain Decision Making Body and Roles table in staff report. Ms. Thompson explained the responsibilities of Zoning Administrator vs Planning Commission. Ms. Chua asked if variances would be under prevue of ZA or Planning Commission. Ms. Thompson said it would be under prevue of the Planning Commission.

Commissioner Chuan asked who would select the Zoning Administrator. Ms. Thompson stated that the ZA would be Planning Staff, the Planning Director, or his designee. Mr. Chuan asked which types of cases would the 300ft noticing be applied to. Ms. Thompson stated that the 300ft noticing would apply to those noted under the Zoning Administrator column on the Decision Making Body and Roles table that she just reviewed for Ms. Chua. Mr. Chuan asked how many projects come through Planning for those entitlements listed under ZA currently go to the Subcommittee. Ms. Thompson noted she did not have that number. Ms. Garner stated that the Subcommittee convenes half a dozen to a dozen times during the course of the year, not frequent, with one to two items that take 5-10 minutes a meeting. Mr. Chuan stated that he trusts Staff but said he is concerned about taking Planning Commissioners out of the loop (being that they are appointed residents by the City/State), and wanted to better understand why this transition is necessary. Ms. Thompson said this recommendation was prompted from the consultant, who Zoning Administrator can refer project to PC because of complexity. Mr. Chuan confirmed that items reviewed by the ZA could still be referred to the Planning Commission if appealable or if ZA feels items are not minor in nature, or is of pulic interest. Mr. Thomas clarified that ZA meeting will still be a public hearing with public process (public hearing notices in newspaper, postcards sent to neighboring areas of project sites); ZA meeting also allow Planning Commission to focus on larger, more complex projects.

Commissioner Alcorn asked if there checks and balances for the ZA; will there any accountability on the Zoning Administrator’s decisions if a project is/is not referred to Planning Commission review. Ms. Thompson noted that she believes so. Mr. Thomas stated that meetings will be held weekly, staff reports will be prepared,

minutes will be taken, it will be public hearing. Ms. Lee said that any decision made is reviewable and can be appealable by City Council. Mr. Thomas also mentioned that the ZA would report projects that were approved/declined to the PC. Mr. Alcorn asked if it would be possible to get requirement of items that the ZA reviews and/or forwards to Planning Commission. Mr. Thomas noted that Mr. Alcorn's request for accountability of appeal and a criteria sheet can be made in his recommendation to the Council. Mr. Alcorn noted that with those items he would feel much more comfortable supporting this.

Commissioner Morris noted that public input and community support is paramount, Ms. Morris would like for all items to stay before the Planning Commission, however with criteria, accountability, checks and balances, feels like it could be efficient. Ms. Morris asked which section code allows for us to change the current formatting of the hearing. Ms. Thompson noted that State Law allows us to make Zoning Text Amendments; that Planning Commission can make recommendations to the Council, whom makes the final decision. Ms. Morris states she feels like our format now, including Planning Commission in all decision making, is efficient.

Vice Chair Ciardella questioned the noticing going from 1000 ft to 300 ft. Ms. Thompson noted that it would only apply to the minor conditional permits. Ms. Thompson, referencing the code, clarified several of Mr. Ciardella's inquiries regarding Day Care minor conditional permits vs. conditional permits and public hearing noticing standards.

Chair Mandal, from a public friendly/business development point of view, inquired how much time is added when bringing minor projects to Planning Commission/Planning Commission Subcommittee, how days/weeks is the public/applicant processed delayed (when going through the commission) and will there still be noticing. Ms. Thompson said she was unable to quantify that, but that the ZA would have the ability to meet more frequently, weekly, whereas the Planning Subcommittee meets every second and fourth Wednesday of the month. Mr. Mandal asked if the consultant, Matrix had other recommendations with process improvement to the Planning area as well as other areas of processes. Ms. Thomas said this is one of many recommendations for process improvement throughout all departments. Mr. Thomas noted that these recommendations were driven by fees to cover costs for community development. Mr. Mandal stated that public friendly, business development and growth needs to be balanced by public participation; Mr. Mandal is still trying to understand it. Ms. Thompson reiterated that there will be public participation at informal public hearings, there will still be public noticing.

Planning Manager, Ms. Garner clarified Mr. Ciardella's noticing inquiry for day cares within 300 feet of another day care, would be a CUP, and brought to Planning Commission. Thereafter, Mr. Thomas reviewed the public notice requirements in code.

Commissioner Chua asked for clarification of the code procedures. Ms. Thompson noted that one governs conditional use permits, whereas, the other governs site development permits. Ms. Thompson also covered which site development permits will be under the purview of the ZA vs. the Planning Commission. Through the Chair to the Director, Ms. Chua wanted to clarify that the ZA is a function not a job title. Mr. Thomas noted that the ZA is a function within the Planning Department.

Commissioner Chuan asked if the Planning Commissioners would be able to add language/make recommendations to this evening's Resolution prior to making a motion. Mr. Mandal noted that it can be done when they make their motions.

Commissioner Tao asked how frequent are SDP submitted/applied for on it's own independent of other permits. Ms. Garner stated it does happen but not too frequently. Mr. Tao asked if a SDP were submitted alone it would be reviewed by ZA; and, if SDP were accompanied by other permit requests, it would still come to Planning Commission for review. Mr. Thomas stated that was correct, it would come to Planning Commission if more than a SDP was submitted. Mr. Tao inquired if the will staff be able to do it (perform and managed ZA role). Mr. Thomas noted another recommendation from Matrix study is to bring on a Principal Planner to help with Director and Manager loads in order to fulfill ZA role. Mr. Tao asked if the personnel changes would happen in time should the ZA role be approved. Mr. Thomas said it is in the budget, in process now and should be done before end of year, in October.

Vice Chair Ciardella asked how many hours a week would be spent by Staff on the ZA role and if it would be a full-time role. Mr. Thomas stated that the staff load will be the same but the hearing would be on a more regular basis. Mr. Ciardella stated he heard rumors that the Planning Department is trying to hire more people and there is nobody out there. Mr. Thomas said that since the economy is doing well; there may be Planners in other jurisdictions that are looking for an opportunity work for Milpitas; when and if we put out a recruitment, we hope to get a good response. Ms. Garner mentioned that prior to hiring Ms. Thompson as a Senior Planner, the City had over 75 applicants for that position, so we should not be short of candidates who want to work for the City. Mr. Ciardella is worried if decision making gets taken away from the Planning Commission that the staff will be too busy to do ZA role.

Commissioner Chuan proposed to continue subcommittee meetings on 2<sup>nd</sup> and 4<sup>th</sup> Wednesdays of the month and ZA meetings the other weeks to alleviate work load of Staff. Ms. Thompson noted that recommendation can be presented to the Council. Mr. Thomas said that subcommittee meets as needed; not every week; same practice will applied towards ZA role – the Staff's workload will be exactly the same.

**Chair Mandal** invited members of the audience to address the commission.

**Motion** to close the public hearing.

Motion/Second: Commissioner Alcorn/Vice Chair Ciardella

AYES: 7

NOES: 0

Commissioner Morris stated she would not support this as-is, would like to see the the language in resolution streamlined with feed back from fellow commissioners, and would like to know what happens per step to make it more efficient.

Vice Chair Ciardella would like to see the Planning Commission still have subcommittee meetings, does not want more decision making taken away from Planning Commission and worried that the Staff would get burned out doing ZA work.

Commissioner Alcorn would like to add recommendation that Planning Commission

vote on a criteria (prepared by Staff) on details of what goes to Planning Commission vs ZA.

Chair Mandal asked when is this scheduled to go to City Council. Ms. Thompson said on June 18<sup>th</sup>.

Commissioner Chua asked Mr. Alcorn about his request/recommendation, referencing the Decision Making Body and Roles table and clarification on. Mr. Alcorn said he would like to see like regulations on paper to include number of public comments, size of project, public controversy, etc., to trigger referral to PC.

Chair Mandal asked City Attorney about how prescriptive can the Commission be with recommendations. Ms. Lee stated Staff would develop guidelines/measures in the language.

Planning Director Ned stated that language would include, Council to direct Staff to prepare guidelines/criteria of determining referrals to the Planning Commission by the Zoning Administrator, and present Planning Commission for review and consideration. Commissioner Chuan asked to include recommendation to alternate weeks to keep subcommittee schedule and have ZA meeting on other weeks, when needed.

Commissioner Morris stated that the ideas are all great but shared that recommendations are not stressed at City Council meetings. Ms. Morris recommended we hold this evening's resolution, have it brought back to Planning Commission after language is updated then sent to Council. Mr. Thomas noted that it needs to be brought to the Council with or without recommendation, approved or denied. Ms. Morris shared she feels intent is lost when brought to City Council. Mr. Thomas said that Ms. Thompson will be making the presentation to the City Council will include recommendations from the Planning Commission; and mentioned that Planning Commissioners are welcome to share their recommendations in writing or attend the City Council meeting when this is presented.

**Motion** to approve, consider and adopt Resolution No. 19-016 ZONING TEXT AMENDMENT – ADMINISTRATIVE HEARING PROCESS – PZA19-0003: City-initiated Zoning Ordinance Text Amendment to establish an Administrative Hearing process and discontinue the Planning Commission Subcommittee, with the condition as stated by Commissioner Alcorn, as stated by the Director (*Council to direct Staff to prepare guidelines/criteria of determining referrals to the Planning Commission by the Zoning Administrator, and present Planning Commission for review and consideration*).

Motion/Second: Commissioner Chua/Chair Mandal

AYES: 5

NOES: 2 (Morris, Ciardella)

ABSTAIN: 0

## **X. NEW BUSINESS**

### **NO ITEMS**

**XI. ADJOURNMENT**

The meeting was adjourned at PM 8:46.

**Motion** to adjourn to the next meeting.

Motion/Second: Commissioner Ciardella/Commissioner Chuan

AYES: 7

NOES: 0

*Meeting Minutes submitted by  
Planning Commission Secretary Elizabeth Medina*